

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7424

BILL NUMBER: HB 1462

NOTE PREPARED: Jan 9, 2009

BILL AMENDED:

SUBJECT: Criminal History Checks.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience.

The bill requires an expanded criminal history background check for a person seeking to obtain or renew a teaching license or certificate.

It also gives civil immunity for certain school employees for certain acts or omissions during the course of their employment. The bill adds the Professional Standards Division to the list of entities to be given notice when a licensed employee of a school is convicted of certain felonies and adds possession of child pornography to the list of felonies to be reported.

Effective Date: Upon passage; July 1, 2009; January 1, 2010.

Explanation of State Expenditures: *Postsecondary Institutions Fee Exemption:* The total number of postsecondary students for which a name-based limited criminal history background check is currently conducted is not known. To the extent that a postsecondary school of education is currently paying the fee for a student to obtain a name-based limited criminal history background check, expenditures for the postsecondary school of education would be reduced. Fees for name-based limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. [*Note:* Current statute refers to these checks as limited criminal history checks.]

Under current law, a person may request a criminal history check review challenge (fingerprint identification is required) after having obtained a limited criminal history check (can be obtained through subject or fingerprint identification). As proposed, the number of name-based limited criminal history checks could increase, impacting the number of criminal history check review challenges for the state. If criminal history review challenges increase as a result of this bill, revenue to the General Fund can increase by fees paid for these requests. Currently, ISP charges \$10 per review challenge. Actual increases of review challenges is indeterminable.

Indiana State Police: As proposed, the Indiana State Police (ISP) could experience an increase in workload if postsecondary institutions demand more limited criminal history checks. If postsecondary institutions are exempt from fees used to pay for processing these requests, ISP would have to manage the additional workload within their current level of resources. However, ISP may experience an offsetting decrease in workload to the extent that teachers were required to provide name-based limited criminal history checks obtained through ISP. [Note: ISP reverted \$185,000 to the General Fund in FY 2007.]

Fingerprint Vendor Selection: The ISP reports that an applicant fingerprint vendor has recently been selected and that the final price for the fingerprint transaction has yet to be finalized. This contract will allow the Records Division of the ISP to receive applicant fingerprint cards electronically and will result in more efficient operations in the Records Division by decreasing workload and increasing response time for requested background checks. The selection of a fingerprint vendor may influence revenue to the General Fund, as well as the workload of the ISP under the bill. Actual impact on workload and revenue is indeterminable as information regarding the vending contract is not currently available.

Background Information: A name-based limited criminal history check is defined as a criminal history check that searches within the state any criminal activity associated with a person's legal name(s). This check must include (1) a disposition and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

The bill defines that an expanded name-based criminal history check includes a search of either (1) all records maintained by all counties in Indiana where the search subject resided during the past seven years, a search of all records maintained by all counties in other states where the search subject resided during the past seven years, and a check of the sex offender registry in all 50 states or the national sex offender registry operated by the U.S. Department of Justice, or (2) a national criminal history background check and a check of either the sex offender registry in all 50 states or the national sex offender registry maintained by the U.S. Department of Justice. The bill would require teachers applying for certification or licensure to either obtain an expanded name-based criminal history check or a national background check, both of which would satisfy the requirements of the application process.

A national criminal history background check is defined as a fingerprint-based check that uses the Federal Bureau of Investigation's (FBI) Automated Fingerprint Identification System (AFIS) to match an applicant's fingerprints to any crimes committed by that applicant nationally or any other method of positive identification. A national criminal history background check is also obtained through the ISP.

A criminal history check review challenge occurs when an applicant who received a name-based limited criminal history check challenges the results by submitting to a fingerprint-based criminal background check

performed by the ISP.

Additionally, it should be noted that the ISP reports that an applicant fingerprint vendor has been selected recently, but information regarding this contract is not currently available. The fiscal impact of this legislation was determined given the current options for fingerprint-based criminal background checks in the state. It is indeterminable what effect, if any, the contract will have on individuals that request criminal history information.

Explanation of State Revenues: *Expanded Criminal History Check for Teachers Applying for Certification and Licensure:* This bill requires individuals that apply for teaching licensure and certification (both renewal and new requests) to complete an expanded name-based criminal history check and a sex offender registry check of all 50 states as a condition of the application process. The Department of Education reports there are approximately 74,000 licensed teachers in the state during academic year 2007-2008.

Fees for expanded criminal history checks are unknown. However a national criminal history background check would also meet the requirements found under the definition of expanded criminal history checks. Currently, all individuals who apply for teaching licenses must submit a limited criminal history background check as a condition of licensure requests and renewals. The bill removes this provision but requires teachers to obtain an expanded criminal history check. To the extent that individuals do not undergo background checks that generate revenue to the General Fund, state revenue will decrease.

Revenue from limited criminal history information requests made by teachers seeking new licensure or renewals will decrease under the bill. The decrease in revenue to the General Fund and the Indiana Office of Technology Portal Fund is expected to be approximately \$369,000 for FY 2010 and FY 2011. A breakdown is presented in Table A.

Table A. Decreases in Limited Criminal History Requests and Revenue.

	Total Requests	General Fund	IOT Portal Fund
FY 2010	13,000	\$91,000	\$91,240
FY 2011	13,360	\$93,250	\$93,766
Total	26,360	\$184,250	\$185,006

The Department of Education (DOE) reports that teachers can obtain three different teaching licenses; one that must be renewed every 2 years, one that must be renewed every 5 years, and one that must be renewed every 10 years. Using information regarding teacher's years of experience, it was assumed that all teachers with 0 or 1 year of experience would apply for only the 2-year licensure, teachers with 2 years of experience would apply for 5-year licensure, and teachers with 7 years of experience or any year of experience ending with 7 would apply for 10-year licensure. Assuming there is no teacher attrition in the state, a total of 13,000 licensure applications are expected to be received in FY 2010 and 13,360 licensure applications are expected to be received in FY 2011.

Fees for limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. Limited criminal history requests that are made by mail or through AccessIndiana provide \$7 per request to the General Fund. Requests made online produce either \$8 or \$9.32 to the Indiana Office of Technology, dependent upon if the request is made by an AccessIndiana subscriber or not.

Revenue to the General Fund may increase to the extent that teachers applying for certification and licensure obtain national criminal history background checks as opposed to purchasing expanded criminal background checks from private companies. National criminal history background checks cost a total of \$32.25, \$17.25 of which is given to the federal government and the remaining \$15 is deposited into the state General Fund.

Table B: Comparison of Current Law and As Proposed.		
	Current Law	As Proposed
Type of Check and Requirement	All licensure applicants are required to submit at least a limited criminal history check. However, depending on school corporation or charter school policy, <u>may</u> be required to submit a national criminal history check for new hires.	Would be required to collect national criminal history check or expanded history check for all individuals applying for licensure and certification (renewals or new applicants).
Fee	<u>Limited</u> : \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National</u> : \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government.	\$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government. Fees for expanded criminal history checks are not known. However, no revenue would be forwarded to state/local governments.
Fee Responsibility	Applicants for licensure and renewal are responsible for all costs associated with obtaining licensure (renewals and new applicants).	Applicants for licensure and renewal would be responsible for all initial costs associated with the requirements of the bill. School corporations are responsible for renewal costs for current employees.

Postsecondary Schools of Education Fee Exemption: To the extent that a student or a postsecondary school of education currently obtains a name-based limited criminal history check for the purposes of the bill, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would depend on the number of students obtaining a name-based limited criminal history check, the method in which the check was obtained, and the fee paid for the check. Postsecondary institutions will experience a decrease in expenditures only to the degree they were paying for criminal background checks for students prior to this bill.

Phone interviews with selected state universities revealed that the policies regarding payment for criminal background checks in postsecondary institutions varied across the board; sometimes the burden fell on the student, and sometimes the institution funded the cost of the check. Actual numbers of criminal background checks by postsecondary institutions was indeterminable because each institution has different policies regarding background checks for students and few kept data on how many background checks they had requested in years past.

Modification of Criminal History Check Policy: Fees vary for limited criminal history background checks and depend on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the IOT Portal Fund. Currently, individuals challenge the results of a name-based criminal background check by requesting a fingerprint-based review challenge. Fees are assessed for a review challenge and these fees are deposited in the General Fund. Any change in revenue would depend on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per review challenge) and the number of people who would, under the bill, obtain a name-

based expanded criminal history check (for which the state would experience no increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

Background Information: In FY 2007, ISP reports that criminal background checks generated \$2.3 M in revenue for the General Fund.

Explanation of Local Expenditures: Local expenditures will increase under the bill to finance the costs of obtaining expanded criminal history information for teachers who apply for license renewal. Under the bill, new licensure applicants are responsible for criminal history information fees. There are an estimated 9,632 teachers who will require license recertification during FY 2010 and 9,992 who will require recertification in FY 2011. Local expenditures will vary depending on the decisions made by school administrators and if there is a fee difference between available expanded criminal history checks and national criminal background checks.

A private company that specializes in criminal background checks offers an instant criminal background check that would qualify as an expanded criminal history check for approximately \$25 per request. It is assumed that schools would request the less expensive criminal history checks and would utilize the private criminal history requests for cost savings. Assuming the above number of teachers who would require licensure renewals, the increase in school expenditures statewide is estimated to be \$241,000 in FY 2010 and \$250,000 in FY 2011. The total increase in expenditures over the biennium is \$491,000.

Explanation of Local Revenues: *Revenue from Fingerprint Cards:* Currently, if a fingerprint card is obtained through an ISP post, of which there are 18 statewide, it is free. If it is obtained from a local law enforcement agency, fees vary. Fees collected from fingerprint cards are used by the local police department which collects the fee. ISP reports that the fingerprint vendor selected uses electronically submitted fingerprint cards. Information regarding how these fingerprint cards will be made available electronically is currently not available but may have an impact on the revenue collected at the local level. Any impact to the fingerprint card fees collected at the local level is unknown.

State Agencies Affected: ISP; DOE; IOT; Postsecondary schools of education.

Local Agencies Affected: Local school corporations and townships; Charter schools

Information Sources: Major Doug Shelton, ISP, (317) 232-8265; Indiana Department of Education Databases; ISP Record Division, ISP Website (www.in.gov/isp); Dean Mark Ferguson, Vincennes University, (812) 888-4301; Kathy Herald, Ball State University College of Nursing, (765) 285-1834; Tom Warner, Ball State University Associate Vice President for Business Affairs, (765) 285-1133; Cindy Wise, Indiana University, (812) 855-9845; Cathy Sleeth, Purdue University (765) 494-5927; Debbie Hinline, Indiana Department of Education, (317) 232-0840; <http://www.instantcriminalchecks.com>.

Fiscal Analyst: Bill Brumbach, 232-9559.